

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LOUIS C. DABBONDANZA and DEPARTMENT OF THE TREASURY,
BUREAU OF ENGRAVING & PRINTING, Washington, DC

*Docket No. 02-1586; Submitted on the Record;
Issued November 12, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs correctly determined appellant's rates of pay at the time of his recurrence of disability on November 16, 1992 and on the date he returned to work on February 8, 1999; (2) whether appellant received an overpayment of compensation in the amount of \$35,198.03; (3) whether the Office properly determined that appellant was at fault in the creation of an overpayment, which was, therefore, not subject to waiver; and (4) whether the Office properly deducted \$500.00 a month from appellant's continuing compensation payments in order to recover the overpayment.

The Office accepted appellant's claim for vocal cord nodules, occupational asthma and generalized anxiety disorder. He worked intermittently, stopping work on November 21, 1989, April 2, 1990 and on November 16, 1992 when he sustained a recurrence of disability. Appellant eventually became reemployed as a sales representative and advertising designer for the Royal Shirt Company on February 8, 1999.¹ By decision dated June 2, 2000, the Office adjusted appellant's compensation to reflect a wage-earning capacity at a rate of \$263.02 based on his weekly pay rate of \$909.05 as of July 1, 1990. By decision dated June 7, 2000, the Office vacated its June 2, 2000 decision and adjusted appellant's compensation to a wage-earning capacity of \$343.60, based on a pay rate of \$1,184.83 as of November 16, 1992, the date of appellant's recurrence of disability. Appellant requested an oral hearing before an Office hearing representative which was held on December 20, 2000. By decision dated March 28, 2001, the Office hearing representative determined that the Office correctly determined that his pay rate on November 16, 1992 should be used but the case needed to be remanded to determine the correct amount of his pay rate on that date, that is, whether appellant was earning \$25.81 or \$24.77, whether appellant was working the night shift at the time and the current pay rate for the job appellant worked at the time of his recurrence of disability. Appellant's supervisor indicated, on appellant's Form CA-2a dated March 3, 1992, that appellant was earning \$25.81 at the time of

¹ The Royal Shirt Company closed in approximately November or December 1999. Appellant apparently continued working although it is not clear for which employer.

the November 16, 1992 recurrence of disability. The Office hearing representative instructed the Office to recompute appellant's loss in wage-earning capacity and determine whether an overpayment existed.

By decision dated July 26, 2001, the Office adjusted appellant's compensation payments to reflect his wage-earning capacity of \$273.97 based on a pay rate of \$978.48. A computer printout shows that, as of February 8, 1999, appellant had a weekly wage of \$978.48. On a work sheet dated May 23, 2001, the Office indicated that appellant's hourly pay rate as of November 16, 1992 was \$21.20 which added to the night differential, \$3.18, totaled \$24.38. The Office also indicated that appellant's current pay rate, if he had continued working in the position he held on November 16, 1992, would be \$32.91.

On December 12, 2001 the Office made a preliminary determination that appellant was overpaid \$35,198.03 because he received total temporary disability compensation payments from February 8, 1999 through May 20, 2000 while he was working. The Office noted that it adjusted appellant's wage-earning capacity on June 7, 2000 and then again on July 26, 2001. The Office stated that appellant was paid \$113,765.61 from February 8 to July 14, 2001, that he should have received \$78,567.58 for that time period and the difference representing the overpayment was \$35,198.03. The Office found that appellant was at fault in the creation of the overpayment because, by letter dated April 19, 1995, it informed appellant that to avoid an overpayment of compensation, he should notify the Office when he returned to work and if he worked, he should return the compensation check or an overpayment might result.

On January 10, 2002 appellant submitted documents contending that the Office calculated the wrong pay rate in determining his wage-earning capacity. He submitted a wage form, WE-4454, dated January 3, 1999, showing that his pay rate when he returned to his job on February 8, 1999 was \$36.78, not \$32.91 as determined by the Office. Appellant also submitted a statement of earnings and leave from the employing establishment for the period September 20 through October 3, 1992 showing that his hourly rate was \$25.81 plus the night differential of \$3.87 or a total hourly wage of \$29.68 and a weekly salary of \$1,187.26.

Appellant submitted his overpayment recovery questionnaire, Form OWCP-20, dated January 7, 2001 and stated that he told several officials at the employing establishment that his salary had not been properly adjusted and he was returning to work on February 8, 1999. He stated that he did not think "the payment" was due him and he "took steps to notify the [Office] immediately." Appellant concluded that he did his part to notify the Office of his reemployment and that he did "everything possible" to get the Office to readjust his salary commencing February 8, 1999. He also stated that at the hearing when he asked the Office hearing representative if there was any overpayment, the Office hearing representative stated that appellant's wage-earning capacity rate was adjusted on May 21, 2000, that the Office's decision was rendered on June 7, 2000 and that there "may not be an overpayment." She further stated that she should doublecheck but, she did not believe that there was an overpayment and that it was not his "problem at this point."

In a letter with no heading on it dated October 10, 2001, appellant requested reconsideration of the Office's decision contending that his hourly pay rate as of November 16, 1992 should be \$29.68 and his hourly pay as of February 8, 1999 was \$36.78. He submitted the

wage statements and a copy of his claim he had previously submitted to support his claim. A date stamp of appellant's letter indicates that the Office received appellant's letter on January 7, 2002.

By decision dated April 4, 2002, the Office finalized its determination that appellant received an overpayment of \$35,198.03 and that he was at fault in the creation of the overpayment. The Office calculated the amount of the overpayment based on appellant's weekly wage of \$978.48. The Office stated that, since appellant received the Office's April 19, 1995 letter informing him that he should notify the Office of his return to work and return any compensation checks to the Office, he knew or should have known that he was not entitled to the compensation payments from February 8, 1999 to July 14, 2001.

The Board finds that the case is not in posture for decision.

The Office determined the amount of the overpayment by subtracting the amount appellant was due from February 8, 1999 to July 14, 2001 which was \$78,567.58 from the amount appellant was paid during that period, \$113,765.61, to obtain the figure of \$35,198.03. The Office calculated the amount of the overpayment using a pay rate of \$978.48 or \$24.46 an hour. As noted above, a computer printout shows that appellant earned \$978.48 as of February 8, 1999. On the May 23, 2001 work sheet, the Office indicated that appellant's hourly rate as of November 16, 1992 was \$21.20 plus a night differential of \$3.18 or a total of \$24.38 and his current pay in the job he worked on November 16, 1992 was \$32.91.

The Board is unable to determine whether the Office's calculation of the amount of the overpayment is correct because the Office's findings on appellant's rates of pay on November 16, 1992 and February 8, 1999 are unclear. The Office did not explain how it obtained an hourly rate of \$21.20. It also did not explain how it computed the night differential. Further, the Office did not explain how it obtained the figure of \$32.91 for appellant's rate of pay on February 8, 1999. Given that appellant specifically challenged the Office's findings on these issues and submitted wage-earning statements to support his contentions, it was essential that the Office address appellant's contentions, give reasons for accepting or rejecting them and explain how it obtained the figures of \$21.20 and \$32.91 with specific reference to supporting documents in the record. The Board has held that the Office is required to make findings of fact and provide a statement of reasons regarding the material facts of the case.² In this case, the Office's failure to explain the basis for its findings on appellant's rates of pay preclude the Board's review of this decision. The case must, therefore, be remanded for the Office to provide reasons with direct references to documents in the records for determining the rates of appellant's pay on November 16, 1992 and February 8, 1999. The Office should explain whether or not appellant's contentions which he supported with wage statements are valid. Upon further development, the Office should recalculate the amount of appellant's overpayment and issue a *de novo* decision on the overpayment. Further, if the Office determines that an amount should be withheld from appellant's continuing compensation, the Office should address the specific figures in appellant's OWCP-20 form, comparing appellant's total monthly income with his total monthly expenses and address appellant's liabilities and assets. The Office should then determine the monthly

² See *Beverly Dukes*, 46 ECAB 1014, 1017 (1995); *James B. Bowers*, 44 ECAB 121, 123 (1992); 20 C.F.R. § 10.126.

deduction and explain why it is reasonable. Upon further development that it deems necessary, the Office should issue a *de novo* decision.

The April 4, 2002 and July 26, 2001 decisions of the Office of Workers' Compensation Programs are vacated and the case is remanded for further action consistent with this decision.

Dated, Washington, DC
November 12, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member